United Nations S/2003/835

Security Council

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Draft resolution

The Security Council,

Recalling its resolutions 827 (1993) of 25 May 1993, 955 (1994) of 8 November 1994, 978 (1995) of 27 February 1995, 1165 (1998) of 30 April 1998, 1166 (1998) of 13 May 1998, 1329 (2000) of 30 November 2000, 1411 (2002) of 17 May 2002, 1431 (2002) of 14 August 2002, and 1481 (2003) of 19 May 2003,

Noting the letter from the Secretary-General to the President of the Security Council dated 28 July 2003 (S/2003/766),

Commending the important work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in contributing to lasting peace and security in the former Yugoslavia and Rwanda and the progress made since their inception,

Noting that an essential prerequisite to achieving the objectives of the ICTY and ICTR Completion Strategies is full cooperation by all States, especially in apprehending all remaining at-large persons indicted by the ICTY and the ICTR,

Welcoming steps taken by States in the Balkans and the Great Lakes region of Africa to improve cooperation and apprehend at-large persons indicted by the ICTY and ICTR, but noting with concern that certain States are still not offering full cooperation,

Urging Member States to consider imposing measures against individuals and groups or organizations assisting indictees at large to continue to evade justice, including measures designed to restrict the travel and freeze the assets of such individuals, groups, or organizations,

Recalling and reaffirming in the strongest terms the statement of 23 July 2002 made by the President of the Security Council (S/PRST/2002/21), which endorsed the ICTY's strategy for completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (ICTY Completion Strategy) (S/2002/678), by concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTY's jurisdiction and transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions, as appropriate, as well as the strengthening of the capacity of such jurisdictions,

Urging the ICTR to formalize a detailed strategy, modelled on the ICTY Completion Strategy, to transfer cases involving intermediate- and lower-rank

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accused to competent national jurisdictions, as appropriate, including Rwanda, in order to allow the ICTR to achieve its objective of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (ICTR Completion Strategy),

Noting that the above-mentioned Completion Strategies in no way alter the obligation of Rwanda and the countries of the former Yugoslavia to investigate those accused whose cases would not be tried by the ICTR or ICTY and take appropriate action with respect to indictment and prosecution, while bearing in mind the primacy of the ICTY and ICTR over national courts,

Noting that the strengthening of national judicial systems is crucially important to the rule of law in general and to the implementation of the ICTY and ICTR Completion Strategies in particular,

Noting that an essential prerequisite to achieving the objectives of the ICTY Completion Strategy is the expeditious establishment under the auspices of the High Representative and early functioning of a special chamber within the State Court of Bosnia and Herzegovina (the "War Crimes Chamber") and the subsequent referral by the ICTY of cases of lower- or intermediate-rank accused to the Chamber,

Convinced that the ICTY and the ICTR can most efficiently and expeditiously meet their respective responsibilities if each has its own Prosecutor,

Acting under Chapter VII of the Charter of the United Nations,

1. *Calls* on the international community to assist national jurisdictions, as part of the completion strategy, in improving their capacity to prosecute cases transferred from the ICTY and the ICTR and encourages the ICTY and ICTR Presidents, Prosecutors, and Registrars to develop and improve their outreach programmes;

2. *Calls* on all States, especially Serbia and Montenegro, Croatia, and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring Radovan Karadzic and Ratko Mladic, as well as Ante Gotovina and all other indictees to the ICTY and calls on these and all other at-large indictees of the ICTY to surrender to the ICTY;

3. *Calls* on all States, especially Rwanda, Kenya, the Democratic Republic of the Congo, and the Republic of the Congo, to intensify cooperation with and render all necessary assistance to the ICTR, including on investigations of the Rwandan Patriotic Army and efforts to bring Felicien Kabuga and all other such indictees to the ICTR and calls on this and all other at-large indictees of the ICTR to surrender to the ICTR;

4. *Calls* on all States to cooperate with the International Criminal Police Organization (ICPO-Interpol) in apprehending and transferring persons indicted by the ICTY and the ICTR;

5. *Calls* on the donor community to support the work of the High Representative to Bosnia and Herzegovina in creating a special chamber, within the State Court of Bosnia and Herzegovina, to adjudicate allegations of serious violations of international humanitarian law;

6. *Requests* the Presidents of the ICTY and the ICTR and their Prosecutors, in their annual reports to the Council, to explain their plans to implement the ICTY and ICTR Completion Strategies;

7. *Calls* on the ICTY and the ICTR to take all possible measures to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all work in 2010 (the Completion Strategies);

8. *Decides* to amend Article 15 of the Statute of the International Tribunal for Rwanda and to replace that Article with the provision set out in Annex I to this resolution, and requests the Secretary-General to nominate a person to be the Prosecutor of the ICTR;

9. *Welcomes* the intention expressed by the Secretary-General in his letter dated 28 July 2003, to submit to the Security Council the name of Mrs. Carla Del Ponte as nominee for Prosecutor for the ICTY;

10. *Decides* to remain actively seized of the matter.

Annex I

Article 15
The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.